Supreme Court, U.S.
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In The

Supreme Court of the United States

STEVEN G. COHEN, SUCCESSOR PERSONAL REPRESENTATIVE AND TRUSTEE, MARION BROWN, JOHN MARTIN, THERESA HUGHES AND ELIZABETH MAZELL,

Petitioners,

v.

MARIO PARLETTA, THOMAS P. NORRIS, MICHAEL MARTIN AND CAROL A. MORRIS,

Respondents.

On Petition For Writ Of Certiorari To The Court Of Appeals For The State Of Michigan

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER THE TRIAL COURT DENIED PETITIONERS' DUE PROCESS RIGHTS, AS GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHEN IT REPEATEDLY INSULTED AND INTIMIDATED COUNSEL FOR PETITIONERS; THREATENED TO "BURY" PETITIONERS' COUNSEL IN A "HOLE" AND "THROW IN THE DIRT"; CONDUCTED CONSISTENTLY ONE-SIDED EVIDENTIARY HEARINGS WHERE PETITIONERS' WERE DENIED THE RIGHT TO CONDUCT CROSS-EXAMINATION AND INTRODUCE EVIDENCE; AND ISSUED OVER $77,000.00 IN ATTORNEY FEES AND SANCTIONS AGAINST PETITIONERS WITHOUT ADHERING TO ANY APPLICABLE LEGAL STANDARDS.

LIST OF PARTIES

PETITIONERS

Marion Brown, John Martin, Theresa Hughes, Elizabeth Mazell and Steven G. Cohen, successor personal representative and successor trustee for the Estate of Margaret Langland are represented by attorney Steven G. Cohen.

RESPONDENTS

Mario Parletta and Thomas P. Norris are represented by attorney Robert Litt, 30600 Northwestern Highway, Suite 245, Farmington Hills, Michigan 48334.

Michael Martin is represented by attorney Joseph Fabrizio, 888 City Center Building, West Big Beaver Road, Suite 1470, Troy, Michigan 48084.

Carol A. Morris is represented by attorney E. Michael Morris, 300 Park Street, Suite 485, Birmingham, Michigan 48009.

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2. Final order dated April 26, 2004 awarding attorney fees. App. 28.
3. Final order dated May 25, 2004 awarding attorney fees. App. 31.
4. Final order dated September 28, 2004 awarding attorney fees. App. 32.
5. Order of Supreme Court dated November 29, 2006, denying application for leave to appeal. App. 36.

STATEMENT OF JURISDICTION

Final orders were entered by the Wayne County Probate Court on April 26, 2004, May 25, 2004, and September 28, 2004. These final orders were timely appealed to the Michigan Court of Appeals, which affirmed them on June 27, 2006. A timely application for leave to appeal to the Michigan Supreme Court was filed on August 8, 2006. The Michigan Supreme Court declined to grant leave by order dated November 29, 2006.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257. This petition is filed within 90 days of the date of the order entered by the Michigan Supreme Court denying leave to appeal.

CONSTITUTIONAL PROVISION

FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

1. INTRODUCTION

This case involves extraordinary abuse of judicial office in the Wayne County (Michigan) Probate Court. In a relatively small decedent's estate worth approximately $250,000.00, the Probate Court awarded over $77,000.00 in attorney fees to two persons who claimed to have performed fiduciary services for the benefit of the estate. One of the alleged fiduciaries (who received over $28,000.00) was a will contestant who was caught taking estate assets and subsequently forced to disgorge them. The other person was a court-appointed fiduciary who performed virtually no services for the benefit of the estate but received in excess of $48,000.00.

The trial judge rejected every effort of Petitioners to subject these fee awards to applicable statutory and case standards, punctuating its decisions with insults to counsel such as "I assume you read English," "Did you go to law school?" and "Go back to law school," as well as repeated and unfavorable comparisons to the judge's seven-year-old son. The trial court repeatedly burdened Petitioners' requests for basic due process with threats to sanction them for requesting discovery and hearings on contested matters.

After being the target of the trial court's abuse for over six months, Petitioners' counsel respectfully suggested to the court that it had "lost its objectivity" and requested that the trial court consider recusing itself. The court denied the request, after calling counsel "aggravating" and accusing counsel of "running up his fees." As punishment for counsel's request, the trial judge immediately intensified his insults and intimidation. Less than one hour later, the court again insulted Petitioners' counsel, sanctioned him twice, without justification or explanation, and then

threatened to "bury" counsel in a "hole" and "throw in the dirt."

Subsequently, the court followed through on its threat and awarded over $77,000.00 in unearned attorney fees. The trial court made these awards after one-sided hearings in which Petitioners were subjected to further threats and intimidation and were not permitted to conduct cross-examination or introduce evidence. The court rendered its decisions with clear hostility and without making a single finding of fact or law.

The trial court's verbal abuse of the Petitioners and their counsel, coupled with repeated deprivations of basic due process rights constitutes an unimaginable abuse of judicial office. An electronic data base search of published and unpublished opinions in the United States reveals no instance of judicial hostility or intemperance approaching the level exhibited in this case, all of which occurred on the record, in full view of the public. This type of conduct, even though it is extremely rare, brings disrepute on the judiciary and the justice system as a whole. The fact that the Michigan Court of Appeals and Michigan Supreme Court considered the judge's conduct nothing more than a justifiable breach of courtesy, unworthy of criticism or reversal, constitutes a clear dereliction of duty to preserve the impartiality and fairness of the justice system. It is respectfully requested that this Honorable Court send a message that such judicial conduct is dangerous and will not be tolerated by the highest court in the land.

2. THE ESTATE LITIGATION

Margaret Langland died on June 27, 2002. Petitioners Marion Brown, Elizabeth Mazell, Theresa Hughes and John Martin are the Decedent's heirs-at-law and the primary beneficiaries of her estate. Petitioner Steven G. Cohen is the present fiduciary for the estate and counsel for the above heirs.

A short time after her death, Decedent's family sought information about her estate from Mario Parletta, a

married man who had insinuated himself into a position of authority over the Decedent. They were told by Parletta that the Decedent died without any assets. Petitioners retained counsel, who wrote two letters to Parletta inquiring about the Decedent's estate. Parletta testified that he ignored these letters and "threw them away." Petitioners then began a lawsuit on August 29, 2002, against Parletta in the Wayne County Probate Court to obtain proper administration and distribution of the estate.

During discovery, the Petitioners learned that Decedent had a will and a trust that had been prepared by Thomas Norris, a non-lawyer, who also happened to be Parletta's stockbroker. This estate plan gave the majority of the Decedent's estate to Petitioners, but also appeared to direct an unusually large devise to Parletta.

Decedent's simple estate consisted of cash, marketable securities and life insurance proceeds in the aggregate amount of approximately $250,000.00. Immediately after Decedent's death, Parletta asserted control over these assets without obtaining proper authority from the probate court or informing the Petitioners. For example, he obtained control over approximately $86,000.00 in cash held by Decedent's landlord by signing a document falsely representing himself as Decedent's "brother/trustee." App. 39. Parletta obtained control over $101,000.00 in marketable securities by having his stockbroker, Norris, retitle them in Parletta's name as trustee for Decedent.

Shortly after commencement of the litigation, the trial court appointed attorney Carol Morris to serve as a disinterested fiduciary for the estate and ordered Parletta to disgorge the funds in his possession. Instead of simply holding these assets and marshaling other property of the Decedent for ultimate distribution by order of the court, Morris began to insinuate herself into the litigation that was being prosecuted between the Petitioners and Parletta. She insisted on being present at depositions and even demanded that Petitioners reschedule proceedings for her convenience. Petitioners' counsel courteously informed her

that involvement in the litigation was not an appropriate and necessary exercise of her administrative authority. Petitioners' repeated requests to confine her actions to proper administrative duties were ignored by Morris.

3. SETTLEMENT OF THE ESTATE LITIGATION

On July 18, 2003, the Petitioners and Parletta reached a settlement of the estate litigation. The settlement was highly favorable to Petitioners in that it directed distribution of the majority of the estate to the Petitioners and a much smaller portion to Parletta. In order to effectuate the settlement, Petitioners filed a motion for entry of settlement and distribution of the estate.

At the hearing on August 27, 2003, the trial court confirmed the settlement and ordered Morris to "immediately" make distributions in accordance with the settlement. Petitioners promptly provided a copy of the August 27th order to Morris, together with a request for distribution of the estate in accordance with the order. When Morris responded with a series of letters which indicated her intent to delay the distribution, Petitioners filed a motion to enforce the order, on September 12, 2003.

The hearing was conducted on October 1, 2003 (five weeks after the order of immediate distribution). Morris acknowledged that she returned from vacation one month prior to the hearing, that she had approximately $266,000.00 in estate funds ready for distribution, and that she failed to make the ordered distributions. Despite this, Judge Szymanski repeatedly interrupted and belittled Petitioners' counsel throughout the preceding:

> MR. COHEN: The court ordered on August 27th that funds from the estate were to be distributed immediately. I provided a copy of that order with my cover letter of that same date to Miss Morris. She did not respond until September 4th. On that date –
>
> JUDGE SZYMANSKI: She was out of town. **Did you read her response?**

MR. COHEN: Yes, I did. I'm about to state what her response was.

JUDGE SZYMANSKI: Okay. **Well, let's get to it.**

MR. COHEN: Thank you, Your Honor. Her response stated that she would begin the liquidation process. I don't know why it wasn't begun earlier. All –

JUDGE SZYMANSKI: She was out of town. **Hello. Did you read her response?**

* * *

JUDGE SZYMANSKI: **Do you want to argue your motion or just argue all sorts of other stuff?**

* * *

JUDGE SZYMANSKI: You say you read it and now I've just got to get to it and tell you where it says what she's done and what she's going to do because **you seem to be having a problem with the English language.**

Tr., October 1, 2003, 11:43 a.m., p. 5-8.

Despite this criticism, Judge Szymanski granted the relief requested in Petitioners' motion by verbally ordering Morris to make full and final distributions by October 6, 2004. Incredibly, however, the court also sanctioned Petitioners $500.00:

JUDGE SZYMANSKI: The basis of the costs is she had to file a response to this. She obviously made it very apparent to you what she was doing. You are way too quick to demand everything to be done today rather than allowing it orderly. You file an emergency motion. Frankly, I should be getting costs on this because I had to read the thing and try and figure out what the problem was here.[1]

Tr., October 1, 2003, 11:43 a.m., p. 25.

---

[1] This was the first of many sanctions assessed against Petitioners and their counsel. None of these sanctions was warranted. All were issued by the trial court with invective and without a single finding of fact or law. Morris did not make distributions on October 6th as ordered. Distributions were finally made on or about October 28, 2003.

4. PARLETTA'S PETITION FOR FEES

On September 10, 2003, Parletta filed a petition for payment of attorney fees in the amount of $25,866.00. Significantly, the petition did not cite any legal authority that would support an award of attorney fees for Parletta's efforts to defraud the estate. Accordingly, Petitioners objected to the petition.

At a hearing regarding discovery matters conducted on January 7, 2004, the trial court made an arbitrary dispositive ruling on matters not before it at the time. The court stated, *sua sponte*, that it would not consider the substantive merits of Petitioners' objection to Parletta's fee petition and would only consider evidence bearing on the reasonableness of the fees requested. The trial court delivered this ruling with insults, threats of sanctions, intimidation, and without the slightest provocation or justification:

> THE COURT: Well, then let me do this. What I'm going to do is I will limit the scope to the reasonableness of the fees. You will take [Mr. Litt's] deposition if you feel it's necessary. **I will warn you right now that if I find you're trying to re-litigate the entire issue, I will sanction you, I will charge you not only their fees, but I will also indicate punitive damages. Further, if you do that, I will refer you for investigation to the Attorney Discipline board. Do I make myself clear?**
>
> Tr., January 7, 2004, 12:11 p.m., p. 6-7. Emphasis added.

Petitioners' counsel requested a clarification of the court's instruction and a confirmation that the fee request would be subject to ***all*** applicable legal standards, not just whether the fees requested were reasonable.

> MR. COHEN: The next request is I'm unclear as to what I may be sanctioned for. Let me give you an example, your Honor. There may be a line item in Ms. Ross' billing that says that she filed a particular petition or attended a particular hearing. I should ~~be a~~llowed to ask how that ***benefitted*** the estate, how that was ***related to estate administration***. I think that's an appropriate question.
>
> THE COURT: Yes, that may be an appropriate question and, of course, their defense to it would be it may not have benefitted the estate, but it's necessary for the defense of the fiduciaries. ***So of course, you could ask that question.***
>
> Tr., January 7, 2004, 12:11 p.m., p. 8. Emphasis added.

In so stating, the trial court clearly reversed its earlier "ruling" that seemed to limit the contested issues to reasonableness only. It plainly approved of questions designed to elicit whether the attorney services provided a benefit to the estate and were related to estate administration. The trial court would later insult, threaten, and sanction counsel for asking questions on these precise issues.

At the same hearing, the trial court made the remarkable ruling that Petitioners could not take the discovery deposition of the person petitioning for attorney fees, Mario Parletta. Instead, the court would only allow Petitioners to depose Parletta's attorney, Robert Litt. Immediately after receiving the ruling, Litt predictably raised the defense of attorney-client privilege. Petitioners' counsel argued that attorney-client communications were clearly placed at issue in Parletta's fee petition and that Petitioners must be allowed to inquire into these communications if the trial court were to disallow testimony from Parletta himself. The court repeatedly interrupted Petitioners' counsel's argument, engaged in unnecessary colloquy, and insulted him:

MR. COHEN: That is true. How can I contest their fee – for instance, if their – if one of their line items says that I had a two hour meeting with my client, okay. If I can't ask them what the subject matter of that meeting was, I can't determine whether it had anything to do with this case.

THE COURT: I will make those determinations at the time of the discovery, but what documents are you looking for? I mean, if they wrote a letter to their client, you don't expect them to produce that?

MR. COHEN: Absolutely, your Honor. There is no attorney-client privilege when –

THE COURT: Communication between them and their client and that's not attorney-client? **Did you go to law school?**

MR. COHEN: Your Honor, if I may be allowed to explain, a letter – communications between attorney clients are privileged except when they are waived. They are waived whenever –

THE COURT: Who waived it?

MR. COHEN: It's waived in their petition. They brought a petition for work done for their client. If I can't find out what work it is that they did for their client, I can't defend against their petition. All attorney-client privilege is waived in an attorney fee petition.

THE COURT: **You better go back to law school.** You're missing it. If it's a dispute between them and their client, yes, it's waived.

Tr., January 7, 2004, 12:11 p.m., p. 24-26. App. 44. Emphasis added.

5. THE TRIAL COURT INTENSIFIES ITS INTIMIDATION

The trial court conducted a hearing on February 3, 2004, regarding a number of matters. At the start of the hearing, Petitioners' counsel tried to suggest, in the most respectful manner possible, that the court consider disqualifying itself without the filing of a formal motion. The

trial court's impatience and intimidation began immediately:

> MR. COHEN: May I bring a very brief preliminary –
>
> JUDGE SZYMANSKI: I asked for his response. Do it preliminarily, but, you know, **if you keep wasting this Court's time, I'm going to begin sanctioning you heavily**. What is it you want to say?[2]
>
> MR. COHEN: It is my firm belief that this Court has lost its objectivity in this case, and I would respectfully suggest that the Court consider disqualifying itself sua sponte from this matter and from hearing any further actions.
>
> JUDGE SZYMANSKI: The motion is denied. While it is true that your tactics verge on the necessity of my calling your clients in to ask them if they realize that at times **I question whether or not you are advocating on their behalf or trying to run up fees on your own behalf**, I try to separate that from the issues that are properly brought before the Court, and while it is true that you seem to object to sort of everything that happens in any way that it happens, and **that can be very aggravating**, the fact is I separate that from the merits of the case. I am in no way predisposed as to your clients and will therefore deny the motion to disqualify.
>
> Tr., February 3, 2004, 2:24 p.m., p. 4-5. Emphasis added.

Immediately after denying the request for recusal, the trial court intensified its intimidation of counsel. For example, at the hearing, the court heard a dispositive motion by Henry Ford Village, the party which had placed $86,000.00 at risk by paying it over to Parletta upon his obviously false assertion that he was Decedent's brother.

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[2] The opposing parties, however, often brought preliminary matters to the court's attention without receiving admonishment.

When Petitioners challenged the motion for failing to state the legal basis for dismissal, the court became annoyed. In its usual fashion, the court berated counsel, interrupted his argument and burdened his requests for basic procedural correctness with threats, insults, and sanctions:

> JUDGE SZYMANSKI: Okay. So you want me to have him go out, draft extensive pleadings, come back and bill you for that.
>
> MR. COHEN: No, Your Honor. I'm entitled to know the legal and the factual basis of a motion brought before the Court. I believe that's MCR 2.119.
>
> JUDGE SZYMANSKI: Okay. So do you want me to send him out, have him brief it out properly and then come back to court.
>
> * * *
>
> JUDGE SZYMANSKI: If you're going to do something, what they're saying is **do it** –
>
> * * *
>
> JUDGE SZYMANSKI: **– or get off the pot.**
>
> Tr., February 3, 2004, 2:24 p.m., p. 8-10. Emphasis added.

The court then granted the motion and sanctioned Petitioners' counsel in the amount of $1,293.67. App. 18. When Petitioners' counsel objected to the sanctions order, the court continued its insulting comments.

> MR. COHEN: I would like an opportunity to argue against that order, Your Honor. That has not been addressed.
>
> JUDGE SZYMANSKI: Okay. Proceed. I thought you'd finished arguing, but **I would be surprised if you ever finished arguing.**
>
> Tr., February 3, 2004, 2:24 p.m., p. 16.

6. THE LITT DEPOSITION: "I'LL BURY YOU"

Immediately after this exchange, the discovery deposition of Parletta's counsel, Robert Litt, was taken on the record before the trial court in connection with Parletta's attorney fee petition. Petitioners' counsel asked Litt to answer the most basic and fundamental question in a probate attorney fee case, whether a particular line item of attorney services actually benefitted the estate. This precise question was specifically approved by the trial court at the January 7, 2004, hearing. During the deposition, however, the court reversed itself and disallowed that line of questioning.

Petitioners' counsel then attempted to demonstrate that Mr. Parletta had never actually served as a fiduciary, another basic requirement of an attorney fee award. The court ruled that Parletta's status as a fiduciary was irrelevant.

After having been barred from these basic areas of inquiry, counsel sought guidance from the court as to what issues could be inquired into at the discovery deposition. The court responded to counsel's prudent and respectful inquiry by threatening to "bury" Petitioners' counsel in a "hole" and "throw in the dirt":

> MR. COHEN: I'm trying to understand from the Court what I can and cannot ask. As the Court is aware, discovery is usually very broad.
>
> THE COURT: . . . I'm not going to allow you to continue to harass them and delay this litigation with frivolous questions. That is what you have been asking. Probably 90 percent[3] of what you've asked so far falls under that category. I was hoping that by giving you some leeway you would get what you needed and you would **move on**. But you don't seem to have any knowledge of what it means to **move on. You like to continue to**

[3] The court is incorrect. Petitioners' counsel's deposition questions were appropriate.

> **dig the hole deeper and deeper, and if you do, I'll throw in the dirt and I'll bury you in it. Do I make myself clear?**
>
> Deposition of Robert Litt, February 3, 2004, p. 34-35. App. 41. Emphasis added.

After this chilling threat, Petitioners' counsel attempted to demonstrate that the services provided to Parletta were in furtherance of his attempt to defraud the estate and not for the purpose of estate administration. The court prevented counsel from asking a basic foundational question regarding the capacity in which Parletta defended the will contest petition. Counsel's request for clarification led to more insults and sanctions:

> MR. COHEN: I am not permitted to ask, Your Honor, in what capacity Mr. Litt believed that Mr. Parletta was named in the initial petition?
>
> THE COURT: Right. You can just look at the petition and you can read it. **I assume you read English. I don't know why you need him to read it to you. I mean, my seven-year-old son I need to read to because a lot of time he doesn't understand big words. I think –**
>
> MR. COHEN: I'm sorry, Your Honor, your voice trailed off at the end.
>
> THE COURT: Okay. **My seven year old needs me to read to him sometimes because he doesn't understand some of the big words. I would assume you know how to read and that you could read.** I think it's a document you even drafted and I think you would be able to understand how he was named in that document. You're really doing a lot of – I mean, this is really – you know what, in fact, I've had enough. I'm terminating the deposition in violation of MCR 2.302(G). I believe the only reason you're taking this deposition, asking these questions, is to harass and prolong the litigation. **I'm going to award sanctions.**
>
> Deposition of Robert Litt, February 3, 2004, p. 40-41. Emphasis added.

Not only did the court terminate the deposition, it then verbally directed judgment in favor of Parletta on his fee petition in full, without any consideration of its merits.

At a hearing conducted on April 14, 2004, the trial court admitted that it erred in directing judgment to Parletta without affording Petitioners an evidentiary hearing. But, the court did not retreat on its order of sanctions and entered an order awarding the amount of $2,379.89 to Parletta. App. 25. This was clearly an excessive sanction for the one hour deposition that was (improperly) terminated by the court.

7. PETITIONERS' MOTION FOR DISQUALIFICATION

After the conclusion of the February 3, 2004 proceedings, it was clear that the trial court did not intend to change its pattern of insulting and intimidating behavior and that, in fact, the respectful oral motion for disqualification had further angered the Court. Petitioners filed a formal written motion for disqualification which was heard on March 3, 2004. The trial court denied the motion without making any substantive findings or offering an explanation for its obviously inappropriate comments. App. 21. Judge Szymanski then referred the matter to the chief judge of the court, who denied the motion as well. App. 23.

8. EVIDENTIARY HEARING ON PARLETTA'S FEE PETITION

The evidentiary hearing on Parletta's fee petition was conducted on April 26, 2004. The trial court again refused to permit an examination of Parletta, even though he had been duly served with a subpoena in advance of the hearing and had not moved to quash same. The court treated Petitioners' demand for production of Parletta in an extremely dismissive manner:

MR. COHEN: Thank you. Then the petitioners would call Mario Parletta.

JUDGE SZYMANSKI: I don't see him.

* * *

MR. COHEN: He's been duly – he's been duly served with a subpoena and he has not appeared.

JUDGE SZYMANSKI: He's not here. So do you have any other witnesses?

* * *

MR. COHEN: Well, I'd like to resolve whether Mr. Parletta is going to be required to appear.

JUDGE SZYMANSKI: I'm not making any order at this time. If you believe that there's something you can do to secure his attendance, you're free to do so.

MR. COHEN: I served a subpoena on his attorney. That's all I'm required to do, Your Honor.

JUDGE SZYMANSKI: And he's failed to appear. That's not unusual.

Tr., April 26, 2004, p. 122-125.

Petitioners were again forced to mount their defense against Parletta's petition through the awkward means of questioning his counsel, Robert Litt. The trial court telegraphed its pre-judgment in the early stages of the cross-examination by Petitioners, stating, "Well, why do you have to ask him a bunch of questions to get to facts which are already in evidence?" Tr., April 26, 2004, p. 30-31.

The trial court also permitted Litt to give nonsensical answers to the most basic questions, as demonstrated in the following example:

MR. COHEN: I've asked you do you contend that the August 27th order provides for the payment of attorney fees, yes or no.

JUDGE SZYMANSKI: **I'll repeat my same answer that I gave the last time. That order**

in conjunction with the other order in conjunction with –

MR. COHEN: It's non-responsive, Your Honor. I'm simply asking yes or no.

JUDGE SZYMANSKI: Okay. Then move on to your next question.

Tr., April 26, 2004, p. 36.

After a brief cross-examination, the court granted the petition for fees without a single finding of fact or conclusion of law. The trial court, *sua sponte*, increased the billing rate charged by Parletta's attorneys from $135.00 an hour to $150.00 an hour, resulting in a fee award in the amount of $28,440.00, in excess of the amount prayed for ($25,866.00). App. 28. When Petitioners objected to the increase, the trial court demonstrated its disdain for basic due process, stating, "We didn't get into that and we won't." The court also held that information regarding Mr. Litt's billing rate "would be attorney-client privileged and we don't need to get into that." Tr., April 26, 2004, p. 156.

9. MORRIS' FIRST FEE PETITION

On September 9, 2003, Carol Morris submitted a petition for the payment of attorney fees in the amount of $15,047.50. The petition was later amended to seek $29,940.31 in fees. Only a small portion of the billed attorney time related to actual estate administration. The majority of the billed time related to the will contest involving Petitioners and Parletta. A significant amount of the billing related to time spent by Morris attempting to obtain other fees. Such "fees for fees" are strictly prohibited under Michigan law. Accordingly, Petitioners objected to the fee petition.

On October 1, 2003, the court conducted an initial hearing on the petition. In furtherance of its pattern of burdening Petitioners' requests for basic rights, the court threatened four times to award additional fees to Morris merely for participating in discovery on her petition:

> JUDGE SZYMANSKI: If you want that level of detail, I will order her to give it to you, but ***I am going to pay her for her time.***
>
> * * *
>
> JUDGE SZYMANSKI: No. I will order her to provide you that documentation, but I do want you to understand, ***she'll be billing for that time*** because that's cost of administration.
>
> * * *
>
> JUDGE SZYMANSKI: Okay. You can take the discovery, ***but she gives me the bill for that time*** because that's not her taking actions in relation to her fees, that's you taking action.
>
> * * *
>
> JUDGE SZYMANSKI: That's okay. Do it again. ***Bill him for it.*** That's fine.
>
> Tr., October 1, 2003, 12:33 p.m., p. 12-16. Emphasis added.

The court then entered an order allowing an evidentiary hearing on the attorney fee petition. The hearing was conducted for a total of six hours in segments over three days, April 20th, May 10th and May 25th of 2004. Morris received evidence from one expert witness and then testified in support of her petition. On May 25th, during Petitioners' cross-examination of Morris, the trial court, *sua sponte*, and without warning, terminated the proceedings and entered judgment in favor of Morris in full. Tr. May 25, 2004, p. 39. App. 31. Petitioners were not permitted to call any witnesses in their own behalf, to finish the cross-examination of Morris or to make a closing argument.

Other than general criticism and impatience with the manner in which the cross-examination was being conducted, the trial court did not make any findings of fact or law in support of its truncation of the proceedings and its award of almost $30,000.00 in attorney fees. After the court's abrupt termination of the hearing, the trial court and Morris' counsel had a dismissive conversation about Petitioners' counsel in connection with entry of the order

of attorney fees, on the record and in the presence of Petitioners' counsel:

> JUDGE SZYMANSKI: Well, it'll be ready in about ten minutes. If you want to wait around for it, you can, if you don't –
>
> MR. COHEN: I'll make ten minutes.
>
> MR. MORRIS: Judge, ask him, where was he going to go. We had the hearing till 4:30. It's now 3:20.
>
> JUDGE SZYMANSKI: You know, all this does is show further to any other court that might be reviewing this that obviously he wasn't serious about his hearing.
>
> MR. MORRIS: Right.
>
> JUDGE SZYMANSKI: Because if he has to go somewhere, then he wasn't planning on going to 4:30 today anyway.
>
> MR. MORRIS: Thank you, Judge.
>
> JUDGE SZYMANSKI: So he wasn't – it really is pretty ridiculous.
>
> Tr., May 25, 2004, p. 48.

10. MORRIS' SECOND FEE PETITION

On June 8, 2004, Morris filed a petition for an additional award of $18,813.50 in attorney fees. Petitioners again objected that none of these fees represented work that was beneficial or necessary to estate administration. The bulk of the time listed in the petition related to preparation for and appearance at the evidentiary hearings on Morris' original fee petition, which comprised approximately six hours. Thus, the request constituted an excessive request for "fees for fees."

At the initial hearing on July 19, 2004, the court simply granted the petition without consideration of the merits and without findings. Tr. July 19, 2004, p. 26-27. The court set a later hearing date to determine the amount of the fees to be awarded.

In addition, in continuation of a clear pattern to assess sanctions and attorney fees without end, the court imposed further sanctions on Petitioners for failing to "provide any evidence of misfeasance, malfeasance or nonfeasance" by Morris at the earlier hearing on May 25, 2004 (which was truncated during the cross-examination of Morris). Tr., July 19, 2004, p. 27. The court assessed additional and unspecified sanctions against Petitioners for filing frivolous pleadings:

> MR. COHEN: ***May I ask the Court to identify specifically which pleadings are being found frivolous under the court rules?***
>
> JUDGE SZYMANSKI: ***No.*** You don't need – I'm not going to respond to that. I'm not going to get out the file and spend another 15 minutes going over the file. You should be aware of that. You've been here in court often enough, you know what you filed, and you can re – you should be able to recall the rulings. So ***I'm not going to do your work for you right now.***

Tr., July 19, 2004, p. 28. Emphasis added.

Subsequently, the Court sent a letter to Petitioners' counsel dated July 23, 2004, which appears to find a majority of the pleadings filed by Petitioners during the pendency of the will contest to have been filed in violation of MCR 2.114. App. 42. The court vaguely asserts that while the documents were not frivolous on their face, they were "improperly presented." It is clear that the trial court intended this document to be an omnibus finding that all actions taken by the Petitioners and/or their counsel during the entire case were frivolous, as a basis for never-ending sanctions to be assessed in the future.

The evidentiary hearing to determine the amount of fees and sanctions to be awarded to Morris was conducted on September 28, 2004. Just after the beginning of the hearing, Petitioners' counsel respectfully requested that the court clarify the effect of the July 23rd letter. The court responded with its usual invective and lack of clarity:

> MR. COHEN: I'm trying to determine whether this is a binding order of the court, Your Honor, or this is just a letter for my information.
>
> JUDGE SZYMANSKI: Take a look at it. Does it look like an order? Does it say it's an order of the court.
>
> MR. COHEN: Okay. No, it does not.
>
> JUDGE SZYMANSKI: Okay.
>
> Tr., September 28, 2004, part two, p. 28.

In its anger at Petitioners' proper and respectful request, the court then immediately terminated the proceedings, *sua sponte*, and directed judgment in favor of Morris in the amount of $18,813.50. Tr., September 28, 2004, part two, p. 29. App. 32. As before, Petitioners were not permitted to conduct cross-examination or introduce evidence in defense of the petition. Again, other than general criticism and statements of impatience with counsel, the trial court did not explain its termination of the proceedings or make any findings of fact or law in support of its judgment.

Petitioners filed an appeal of the three fee awards, asserting that they were entered without proper notice and an opportunity to respond and were presided over by a biased judge, all in violation of due process. The Michigan Court of Appeals opinion nominally addressed disqualification for bias under the Michigan Court Rules, App. 15; however, the court did not address due process disqualification. The opinion wrongly dismissed the argument that the proceedings were fundamentally unfair, elevating a trial court's inherent power to control proceedings over affording basic due process. App. 9-10. Petitioners' Application for leave to appeal to the Michigan Supreme Court was denied.[4] This Petition then followed.

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[4] After leave to appeal was denied, Morris filed a petition seeking an additional $27,259.02 in attorney fees connected with Petitioners' unsuccessful appeal. The trial court granted the petition without any findings or justification. (Judgment attached as App. 34). As in other jurisdictions, Petitioner fees are a matter for the appeals court to decide, not the trial court. There can be no doubt that the trial court intends to

(Continued on following page)

ARGUMENT

I.

THE TRIAL COURT DENIED PETITIONERS' DUE PROCESS RIGHTS, AS GUARANTEED UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, WHEN IT REPEATEDLY INSULTED AND INTIMIDATED COUNSEL FOR PETITIONERS; THREATENED TO "BURY" PETITIONERS' COUNSEL IN A "HOLE" AND "THROW IN THE DIRT"; CONDUCTED CONSISTENTLY ONE-SIDED EVIDENTIARY HEARINGS WHERE PETITIONERS' WERE DENIED THE RIGHT TO CONDUCT CROSS-EXAMINATION AND INTRODUCE EVIDENCE; AND ISSUED OVER $77,000.00 IN ATTORNEY FEES AND SANCTIONS AGAINST PETITIONERS WITHOUT ADHERING TO ANY APPLICABLE LEGAL STANDARDS

A. PETITIONERS DID NOT RECEIVE A FAIR TRIAL

The Fourteenth Amendment to the Constitution of the United States provides to litigants the fundamental guarantee of due process. A basic requirement of due process is a "fair trial in a fair tribunal." *In re Murchison,* 349 U.S. 133, 136, 99 L. Ed. 942, 75 S. Ct. 623 (1955); *Anderson v. Sheppard*, 856 F.2d 741 (6th Cir. 1980). "Fairness, of course, requires an absence of an actual bias in the trial of cases." *Anderson v. Sheppard*, 856 F.2d 741, 745 (6th Cir. 1980). However, due process requires that the trial of the case should endeavor to prevent even the probability of unfairness. *In re Murchison,* 349 U.S. 133, 136, 99 L. Ed. 942, 75 S. Ct. 623 (1955).

Regarding the proper role of a judge in judicial proceedings, the Court of Appeals for the Sixth Circuit has stated as follows:

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impose sanctions as a penalty for the Petitioners' exercise of their constitutional and appeal rights *ad infinitum*.

> One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias and or prejudice in the trial of the case. If this basic principle is violated, the judgment must be reversed.
>
> Bias or prejudice on the part of a judge may exhibit itself prior to the trial by acts or statements of his part. Or it may appear during the trial by reason of the actions of the judge in the conduct of the trial.
>
> * * *
>
> The judge should exercise self-restraint and preserve an atmosphere of impartiality. When the remarks of the judge during the course of a trial, or his manner of handling the trial, clearly indicate a hostility to one of the parties, or an unwarranted prejudgment of the merits of the case, or an alignment on the part of the Court with one of the parties for the purpose of furthering or supporting the contentions of such party, the judge indicates, whether consciously or not, a personal bias and prejudice which renders invalid any resulting judgment in favor of the party so favored. . . .
>
> *Knapp v. Kinsey*, 232 F.2d 458, 465-67 (6th Cir. 1956), *cert. denied*, 352 U.S. 892, 1 L. Ed. 2d 86, 77 S. Ct. 131 (1956). (Internal citations omitted.)

Further, great care must be taken by a judge to always be calmly judicial, dispassionate and impartial. *United States v. Hickman*, 592 F. 2d 931, 933 (6th Cir. 1979). A trial judge should sedulously avoid all appearances of advocacy. *Frantz v. United States*, 62 F.2d 737, 739 (6th Cir. 1933). "The basic requirement is one of impartiality in demeanor as well as in actions." *U.S. v. Frazier*, 584 F.2d 790, 794 (6th Cir. 1978). Bias is such a paramount concern that the harmless error doctrine is inapplicable in cases where judicial bias and/or hostility is found to have been exhibited at any stage of a judicial proceeding. *Anderson v. Sheppard*, 856 F.2d 741, 746-47 (6th Cir. 1980).

Hostile and demeaning conduct exhibited by a judge toward litigants or their counsel plainly violates a party's fair trial rights. *United States v. Coke*, 339 F.2d 183 (2nd Cir. 1964) (the trial judge's caustic and disparaging remarks to defense counsel deprived defendant of a fair trial); *United States v. DeSisto*, 289 F.2d 833 (2nd Cir. 1961) (belittling of counsel was unfairly prejudicial); *United States v. Spears*, 558 F.2d 1296, 1298 (7th Cir. 1977) ("On balance, we think that the trial judge 'lost his cool,' departed from the equanimity of spirit required of him, and seriously prejudiced the defense."); *United States v. Segines*, 17 F.3d 847, 853 (6th Cir. 1994) (the trial judge's hostility had a presumptively "chilling effect" on the conduct of the trial by defense counsel); *Nationwide Mutual Fire Insurance Co. v. Ford Motor Co.*, 174 F.3d 801, 808 (6th Cir. 1999) (the trial judge's frequent interruptions and intemperate tone so infected the trial with the appearance of partiality that a new trial was necessary.); *People v. Lobsinger*, 64 Mich. App. 284, 291, 235 N.W.2d 761 (1975) (Disqualification for bias is warranted when a trial judge displays personal animosity toward a party); *People v. Wigfall*, 160 Mich. App. 765, 775, 408 N.W.2d 551 (1987) (berating, scolding and demeaning of attorney compromised judicial impartiality).

The cases cited above, all of which resulted in reversal due to inappropriate judicial hostility, did not involve conduct approaching the level of hostility present in this case. The trial court's unprovoked and improper bias was evident. The trial court's threats and intimidation were wholly one-sided; at no time was any person other than Petitioners' counsel singled out for criticism, threats or sanctions. The trial court's conduct was also consistent; from October 1, 2003, the court threatened, insulted and/or sanctioned Petitioners' counsel at every single hearing conducted through to the conclusion of the case. Virtually every argument posed by Petitioners was met with derision, disrespect, and sanctions.[5]

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[5] Due to space constraints, only the most egregious of the improper judicial exchanges have been discussed herein. The transcripts are

(Continued on following page)

The court's intimidating conduct seemed to rachet up during the proceedings in an intentional effort to intimidate and bully the Petitioners and their counsel. During the early stages of this case, the court repeatedly threatened to sanction, grieve and/or hold Petitioners' counsel in contempt merely for requesting basic procedural correctness and due process. Later, the court engaged in insulting personal remarks, unfavorably comparing Petitioners' counsel with his seven-year-old son and asserting that counsel had "a problem with the English language."

The intimidation increased to new levels when the trial court openly questioned whether Petitioners' counsel had gone to law school and admonished him to "go back to law school." Asking an attorney in open court "did you go to law school" is particularly "injurious to the dignity" of counsel and constitutes wholly improper "ridicule and denigration." *People v. Wigfall*, 160 Mich. App. 765, 775, 408 N.W.2d 551 (1987).

Petitioners' counsel never provoked the trial court or reacted to its hostility. Petitioners' counsel maintained his professional and courteous demeanor at all times. After being told to "go back to law school", however, Petitioners brought a respectful oral suggestion that the trial court had lost its objectivity and should consider recusing itself. It was apparent that this only further angered the trial court. Within one hour of hearing this respectful oral motion, the trial court sanctioned Petitioners' counsel, repeatedly insulted him and then threatened to "bury" Petitioners' counsel in a "hole" and "throw in the dirt."[6]

The conduct of the trial court was not only in violation of constitutional fair trial standards, but was egregiously unethical as well. The trial court's conduct was in clear

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saturated with disrespectful and demeaning comments directed by the trial judge to Petitioners' counsel.

[6] Petitioners' counsel is Jewish. This threat appears targeted to counsel's ethnic background for maximum chilling effect.

violation of no less than eight Michigan constitutional provisions, canons of ethics, and court rules:

(1) Misconduct in office, as defined by the Michigan Constitution of 1963, as amended, Article 6, section 30 and MCR 9.205;

(2) Conduct clearly prejudicial to the administration of justice, as defined by the Michigan Constitution of 1963, as amended, Article 6, Section 30 and MCR 9.205;

(3) Failure to establish, maintain, enforce, and personally observe high standards of conduct so that the integrity and independence of the judiciary may be preserved, contrary to the Code of Judicial Conduct, Canon 2A;

(4) Irresponsible or improper conduct that erodes public confidence in the judiciary, in violation of the Code of Judicial Conduct, Canon 1;

(5) Conduct involving impropriety and the appearance of impropriety, in violation of the Code of Judicial Conduct, Canon 2A;

(6) Failure to conduct oneself at all times in a manner that would enhance the public's confidence in the integrity and impartiality of the judiciary, contrary to the Code of Judicial Conduct, Canon 2B;

(7) Conduct that exposes the legal profession or the courts to obloquy, contempt, censure, or reproach, in violation of MCR 9.104(A)(2);

(8) Conduct that is contrary to justice, ethics, honesty or good morals, in violation of MCR 9.104(A)(3).

Under the standards for judicial discipline set forth in *In re Brown*, 461 Mich. 1291, 1292-93, 625 N.W.2d 744 (2000) the trial court's conduct is particularly egregious because it was part of a deliberate one-sided pattern, was rendered from the bench, was prejudicial to the actual administration of justice, and undermined the ability of the justice system to reach a just result.

There are additional factors present in this case that magnify the impropriety of the trial judge's conduct. First, it is significant that a jury trial was not available on the

attorney fee petitions. When a judge exercises both the functions of the court and the jury, he should be even more scrupulous to avoid the appearance of partiality. *People v. Ramsey,* 385 Mich. 221, 187 N.W.2d 887 (1971); *See also Cain v. Michigan Department of Corrections,* 451 Mich. 470, 541, 548 N.W.2d 210 (1996) (*Riley, J., dissenting*) (A court must proceed cautiously when the trial judge is the trier of fact).

In addition, the trial court repeatedly ruled on dispositive matters *sua sponte* and without affording Petitioners notice and an opportunity to respond. *Sua sponte* rulings should be made sparingly. *See O'Donnell v. H.J. Van Hollenbeck Leasing, Inc.,* 12 Mich. App. 536, 539, 163 N.W.2d 280 (1968). Where a court rules *sua sponte,* it must provide notice and an opportunity to be heard. *See Perez v. Ortiz*, 849 F.2d 793, 797 (2nd Cir. 1988); *see also Haji v. Prevention Insurance Agency, Inc.,* 196 Mich. App. 84, 88, 492 N.W.2d 460 (1992) (*Judge Corrigan, dissenting*) (A trial judge commits an error of the most basic kind when it dismisses a case, *sua sponte*, without prior notice and an opportunity to be heard.)

The Michigan Court of Appeals disposed of Petitioners' judicial bias argument in a few short paragraphs, apparently considering the court's conduct nothing more than a justifiable breach of courtesy. Its opinion did not address any of the substantive bias arguments, instead asserting that Petitioners "failed to show that the judge's views controlled his decision-making process." The Michigan Court of Appeals is incorrect. The trial court's decision-making process was clearly overwhelmed by the antagonism he felt for Petitioners' counsel and this resulted in a complete denial of Petitioners' right to a fair trial.

B. PETITIONERS DID NOT RECEIVE ADEQUATE NOTICE AND AN OPPORTUNITY TO BE HEARD ON THE FEE PETITIONS

Due process in court proceedings requires, in addition to a fair trial, adequate notice and an opportunity to be heard. *Preiser v. Newkirk*, 422 U.S. 395, 95 S. Ct. 2330, 45

L. Ed. 2d 272 (1975). The hearing must be "at a meaningful time and in a meaningful manner. *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965). These principles require an effective opportunity to defend by cross-examining adverse witnesses and by presenting evidence and arguments. *Goldberg v. Kelly,* 397 U.S. 254, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). The touchstone of due process is protection of the individual against arbitrary action of government. *Dent v. West Virginia*, 129 U.S. 114, 123, 9 S. Ct. 231, 32 L. Ed. 623 (1889).

The trial court's obvious bias infected every proceeding. This is not a case where the trial court simply disliked counsel; rather, the court's bias affected the manner in which the proceedings were conducted and the outcome of the proceedings. The trial court conducted one-sided hearings in which Petitioners were consistently denied the right to conduct cross-examination, call witnesses on their behalf, and deliver arguments. Ultimately, the trial court rendered rulings that were wholly arbitrary and lacked adherence to all applicable legal standards.

For example, with respect to the Parletta fee petition, the trial court prevented Petitioners from examining the petitioner himself. Petitioners intended to demonstrate that Parletta took no action to advance estate administration and that he, in fact, fraudulently assumed control over estate assets and concealed this activity from Petitioners. Instead, the Petitioners were left to examine Parletta's attorney, a poor substitute for a direct and searching examination of the person whose actions were at issue. The examination of Parletta's attorney also came with attendant attorney-client privilege limitations that hampered the examination. The trial court's inexplicable protection of Parletta from examination was inappropriate and interfered with the administration of justice at the hearing.

With respect to the two Morris fee petitions, the Petitioners were not permitted to give evidence of any kind, while Morris was afforded the right to call lay and expert witnesses on her behalf. Those hearings were as

obviously one-sided as hearings could be. Not only was the right to give evidence infringed, but Petitioners were not even allowed to cross-examine Morris. The transcript demonstrates a trial judge doing his utmost to protect Morris from searching cross-examination and then terminating the proceedings without justification.

The trial court compounded the fundamentally unfair proceedings by rendering utterly arbitrary rulings at the conclusion of the hearings. For example, the fee petitions filed by Parletta and Morris, and Petitioners' defenses thereto, required that the trial court adhere to the following clear black-letter probate law: Attorney fees expended by a fiduciary are reimbursable only for "necessary legal services." MCLA 700.3715(w). Such attorney services must "benefit" the estate, such as by increasing or preserving assets of the estate. *In re Sloan Estate,* 212 Mich. App. 357, 362, 538 N.W.2d 47 (1995). An attorney may not obtain fees in connection with efforts to obtain other fees ("fees for fees" are strictly prohibited). *Id.* A fiduciary's participation in the process of determining heirs does not benefit the estate and therefore does not merit compensation. *In re Estate of Brack,* 121 Mich. App. 585, 591, 329 N.W.2d 432 (1982).

None of these standards, critical to Petitioners' defense of the fee petitions, were ever applied. The complete findings of the court after the conclusion of the April 26, 2004, hearing on Parletta's petition are as follows:

> JUDGE SZYMANSKI: . . . The fact is the attorneys here served administratively on behalf of the nominated fiduciary to determine the efficacy of certain documents that were central to the administration of the estate. The settlement itself consumes many of the issues that might have been before the Court. The bad faith of Mario Parletta that was alleged was settled and, therefore, is no longer an issue before this Court. I did not read into the settlement that all attorney fees would be paid, but, rather, read that those attorney fees that were the result of the administration of the estate would be paid

> because they are clearly administrative costs consistent with both the order entered somewhere around August 27th of '03 based upon the letters dated July 17 and July 18, also '03. . . .
>
> Tr. April 26,2004, p. 153.

The court did not find a single subsidiary fact relating to the contested factual issues, such as whether Parletta ever served as personal representative, whether he or his attorneys performed any services which were necessary or provided a benefit to the estate, or whether the fees were reasonable. The trial court did not identify a single principle of law in rendering its conclusion. Its statement that "the attorneys here served administratively on behalf of the nominated fiduciary to determine the efficacy of certain documents that were central to the administration of the estate" is simply conclusory and does not state the applicable legal standard. In fact, there is no authority for an award of attorney fees to a will contestant who is caught converting estate assets and is forced to disgorge them to the proper heirs.

The trial court did not issue any findings whatsoever in connection with the two awards of attorney fees to Morris, because it prematurely terminated the proceedings without justification. These hearings were simply one-sided show trials that flaunted the trial court's disregard for basic fairness and due process.

The Court of Appeals opinion did not address any of the deficiencies in the trial court's three attorney fee awards. Instead of subjecting the trial court's decisions to applicable legal standards, the Court of Appeals consistently relied on the inherent power of the trial court to control proceedings before it and its power to issue sanctions under the Michigan Court Rules.

The Court of Appeals decision is notable for its strong criticism of Petitioners' counsel and the lack of specific reference to any conduct of counsel that was in any way inappropriate. The Court failed to cite such conduct because there was none; at all times counsel maintained his professionalism, composure and respect in the face of

withering and wholly unjustifiable intimidation leveled by the trial court. Petitioners objected in good faith and with specificity to the attorney fee petitions. Even to the present date, there has never been any consideration of the substantive merits of these objections or findings thereon.

CONCLUSION

The trial court in this matter threatened to bury Petitioners' counsel in a hole and throw in the dirt, and proceeded to do just that. The court awarded over $28,000.00 in attorney fees to a person, Mario Parletta, whose only involvement in the estate was an attempt to defraud it. He did not qualify, serve or perform any services as fiduciary. The court did so without permitting Petitioners to examine Parletta at a hearing and without consideration of any of the applicable standards.

The trial court awarded over $48,000.00 to Morris under even worse conditions: it prematurely terminated all of the proceedings on Morris' fee applications without affording Petitioners the opportunity to cross-examine adverse witnesses, introduce any evidence, and make a closing argument, in violation of fundamental due process. As with Parletta, the court intentionally ignored all applicable legal standards in rendering its rulings.

The proceedings were saturated with the abusive, threatening, and intimidating verbal comments of the trial judge. The trial court's open expression of its hostility, on the record and in public, demonstrates a reckless disregard of its judicial duties and ethical responsibilities.

The trial court's repeated violations of due process and obvious hostility towards Petitioners and their counsel resulted in a denial of a fair trial. Therefore, Petitioners respectfully request that certiorari be granted. In the alternative, Petitioners request that this Honorable Court reverse the decision of the Michigan Court of Appeals and dismiss the three fee petitions that are the subject of Petitioners' appeal.

Respectfully submitted,

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STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of
MARGARET LANGLAND,
Deceased.

MARION BROWN, JOHN MARTIN, THERESA HUGHES, and ELIZABETH MAZELL,

Petitioners-Appellants,

v

MICHAEL MARTIN, MARIO PARLETTA, THOMAS P. NORRIS, and CAROL A. MORRIS, Successor Personal Representative and Successor Trustee of the Estate of MARGARET LANGLAND, Deceased,

Respondents-Appellees.

UNPUBLISHED
June 27, 2006

No. 255287
Wayne Probate Court
LC No. 02-653718-TV

In re Estate of
MARGARET LANGLAND,
Deceased.

CAROL A. MORRIS, Successor Personal Representative and Successor Trustee of the Estate of MARGARET LANGLAND, Deceased,

Petitioner-Appellee,

v

No. 256134
Wayne Probate Court
LC No. 02-653718-TV

STEVEN G. COHEN, MARION BROWN, JOHN MARTIN, THERESA HUGHES, and ELIZABETH MAZELL,

Respondents-Appellants.

In re Estate of MARGARET LANGLAND, Deceased.

CAROL A. MORRIS, Successor Personal Representative and Successor Trustee of the Estate of MARGARET LANGLAND, Deceased, E. MICHAEL MORRIS, ROBERT LITT, MARCIA ROSS, and MORRIS & MORRIS, P.C.,

Petitioners-Appellees,

v.

MARION BROWN, JOHN MARTIN, ELIZABETH MAZELL, and STEVEN G. COHEN, d/b/a COHEN & ASSOCIATES, P.C.,

Respondents-Appellants.

No. 258476
Wayne Probate Court
LC No. 02-653718-TV

Before: Cooper, P.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

In these consolidated appeals,[1] the heirs and their counsel appeal as of right from the trial court's orders granting attorney fees and costs in this will contest action. We affirm.

The heirs alleged that during Margaret Langland's lifetime, Parletta and Norris improperly influenced her to prepare an estate plan that gave the majority of any assets to Parletta.[2] The heirs further alleged that after Margaret

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[1] In Docket No. 255287, petitioners, Marion Brown, John Martin, Theresa Hughes, and Elizabeth Mazell (collectively designated as "heirs"), represented by their attorney, Steven G. Cohen ("Cohen"), appeal as of right from the probate court order granting attorney fees and costs in the amount of $30,064.41 to respondents Mario Parletta ("Parletta") and Thomas P. Norris ("Norris") for legal representation provided by their attorneys in the challenge to the appointment of Parletta as personal representative and trustee for the decedent's estate. In Docket No. 256134, the heirs and their counsel, Cohen, appeal as of right from the probate court order granting petitioner Carol Morris' ("Morris") request for payment of fees, costs, and sanctions, in the amount of $18,642.50 incurred in her capacity as the successor personal representative and the successor trustee of decedent's estate. The heirs also challenge the award of $11,297.81 in fees and costs provided by E. Michael Morris of Morris & Morris, P.C., on behalf of Morris in her capacity as successor personal representative and trustee. In Docket No. 258476, the heirs and Cohen appeal as of right from the probate court order granting petitioners, Morris and E. Michael Morris, additional attorney fees and costs in the amount of $7,068 and $11,745.50, respectively, and the holding that the awards of costs and attorney fees were to be given priority for payment of fee claims from the decedent's estate.

[2] The heirs provide a detailed factual statement regarding the relationship between Parletta, Norris, and Langland, and the circumstances surrounding the execution of an estate plan, relying on deposition testimony. Appellate review is limited to the record established in the lower court, and a party may not expand the record on appeal. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). Because of the limited appellate review, the appellants have the duty to ensure that the record on appeal is complete. See *Band v Livonia Associates*, 176 Mich App 95, 103-104; 439 NW2d 285 (1989).

(Continued on following page)

Langland's death on June 27, 2002, Parletta improperly exercised control over her assets. The heirs allegedly were required to file proceedings in the probate court to obtain information regarding the available estate assets and to preclude Parletta's alleged conversion of estate assets. Although the heirs moved the probate court to remove Parletta as trustee, the probate court refused, noting that assets were contained within the estate and the only expenditure by Parletta was the cost of the funeral. The probate court never found cause to remove Parletta from his fiduciary position. However, Parletta ultimately was unable to continue in his fiduciary capacity when he could not obtain a bond, and Morris was appointed by the probate court as the successor trustee and personal representative.

Despite the allegations of a conspiracy and improper conduct by Parletta and Norris, the heirs agreed to enter into a settlement agreement. On July 18, 2003, Cohen, acting on behalf of the heirs, sent a letter containing the terms of a counteroffer presented by the attorney for Parletta and Norris, and this letter indicated that the counteroffer was accepted:

As I understand it, your counteroffer contains the following terms:

We do not consider any alleged evidence proffered by the parties for which there is no record support. *Id.* Although the lower court docket entries indicate nearly two hundred and fifty events reflecting the filing of pleadings, orders, or motion hearings, the record on appeal consists of transcripts and duplicate copies of some orders filed by the lower court. Consequently, we have limited our review to the information contained in the lower court record. There is no indication in the docket entries that the depositions were filed in the lower court.

> 1. Respondents are to receive two-thirds of the Henry Ford Village proceeds and the Petitioners [heirs] are to receive the remainder of the probate, trust and other assets of Margaret Langland;
>
> 2. The two-thirds Henry Ford Village proceeds are to be distributed to Respondents immediately;
>
> 3. Respondents are to receive full releases of liability from all necessary persons; and
>
> 4. Administrative costs relating to this matter, including those related to the successor trustee, Ms. Morris, are to be paid by Petitioners.

With this understanding, the counteroffer of Respondents is accepted. The parties could not agree on the language of the settlement agreement. Correspondence between the parties indicated that Cohen objected to attorney fees and costs requested by Parletta covering the time period when he acted as a fiduciary for the estate. A hearing was held before the probate court, and the court concluded that the language of the counter offer addressed administrative costs that include costs and attorney fees. Consequently, the probate court entered a written order delineating the settlement agreement that provided: "All administrative costs shall be paid by the estate."

Despite the entry of the settlement agreement, the parties continued to debate the propriety of costs and attorney fees. The probate court allowed the heirs to engage in discovery regarding the charged costs and attorney fees. Further, the probate court held evidentiary hearings regarding the costs and attorney fees to be paid by the estate. However, during the hearings, Cohen would

repeatedly challenge facts and proceedings that occurred before the settlement agreement. The probate court repeatedly had to admonish Cohen to elicit information that was relevant to the issue at hand. As the proceedings continued, the exchanges between the parties' attorneys became acrimonious. The probate court's comments to Cohen also indicated a level of frustration regarding the content of the hearings and the need for additional hearing time. The probate court at various points during the proceedings sanctioned Cohen for failing to abide by the court's rulings and the filing of frivolous pleadings. The sanction imposed resulted in an award of costs and attorney fees for the attorneys opposing Cohen. The heirs challenge the awards of costs and attorney fees in these consolidated appeals.

As a result of the acrimonious nature of the proceedings, Cohen apparently orally requested that the probate court sua sponte disqualify itself. The probate court acknowledged the deficiencies in the motion,[3] but ultimately denied the request. The chief judge of the probate court also denied the motion for disqualification. See MCR

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[3] The applicable court rule indicates that a motion to disqualify must be filed within fourteen days of discovering the grounds for disqualification in order to avoid delaying the trial or inconveniencing the witnesses. MCR 2.003(C)(1). A written motion was never filed. The probate court noted that the motion was not raised within fourteen days of discovery of the basis for the disqualification. Moreover, the probate court repeatedly held that Cohen was engaging in delay tactics and inappropriately causing the heirs to incur additional fees. An affidavit delineating the grounds for disqualification did not accompany the motion as required by the court rule. MCR 2.003(C)(2). Despite these deficiencies, the probate judge and chief probate judge entertained the motion and denied the requested relief.

2.003(C)(3)(a). The heirs also challenge the denial of the motion for disqualification on appeal.

The heirs first allege that the settlement agreement did not provide for a claim of costs and attorney fees by Parletta, the probate court denied them due process by failing to allow full discovery and evidentiary hearings regarding this claim, and the probate court's factual findings and conclusions of law were deficient. We disagree. This court reviews a trial court's decision regarding attorney fees and costs for an abuse of discretion. *Kernen v Homestead Dev Co,* 252 Mich App 689, 691; 653 NW2d 634 (2002). An agreement to settle a pending lawsuit constitutes a contract, and the agreement is governed by the legal principles applicable to interpretation and construction of contracts. *Columbia Associates v Dep't of Treasury,* 250 Mich App 656, 668; 649 NW2d 760 (2002). The goal of contract construction is to determine and enforce the parties' intent based on the plain language of the contract itself. *Old Kent Bank v Sobczak,* 243 Mich App 57, 63; 620 NW2d 663 (2001).

Review of the documentation reveals that attorney for the heirs, Cohen, sent a letter to opposing counsel delineating the terms of the settlement between the parties. This letter stated that: "Administrative costs relating to this matter, including those related to the successor trustee, Ms. Morris, are to be paid by Petitioners." When a dispute arose regarding the extent of the payment of costs and attorney fees, the probate court concluded that administrative costs involving an estate matter include attorney fees and costs. Therefore, the probate court entered a written order providing that "All administrative costs shall be paid by the estate."

We cannot conclude that the probate court erred in its interpretation of the contract based on the terms expressed in the counter offer. *Columbia Associates, supra.* The documents comprising the settlement agreement, while specifically including the administrative costs incurred by Morris, neither limit nor restrict payment to only those administrative costs. The use of the term "all" indicates an intent that any administrative costs incurred "relating to this matter" are to be paid by "petitioners [heirs]." Hence, the probate court's ruling that "the costs in determining whether or not the documents were valid, and pursuing all of that is included in the administrative costs, and therefore, are to be paid," is in full accord with the terms of the settlement. Additionally, the settlement agreement is not dispositive on this issue. The entitlement to fees and costs incurred for administration of the estate, and in defending the validity of the testamentary documents in conjunction with Parletta's appointment as a fiduciary, are governed and permitted by statute, leaving only the reasonableness of the fees, not their award, to be the only legitimate issue. MCL 700.7401(2)(v); MCL 700.3720.

Cohen does not contest the terms utilized in the counter offer, but rather, admits that "some loose language" was conveyed in the acceptance letter. It is further alleged that what the heirs and Cohen "meant, but did not convey very well" was that they intended to take over administration of the estate from Morris immediately after distribution and would be responsible for all administrative costs of the matter incurred to close the various estates. This acknowledgement of inartful drafting does not provide a basis to disregard the plain language of the settlement agreement. Opposing counsel relied upon the

terms utilized in the settlement agreement and was unaware of what Cohen "meant, but did not convey very well." Moreover, the heirs fail to cite any authority in support of their request that this Court disregard the plain language of the settlement agreement. "A party may not simply announce a position and leave it to this Court to discover the basis for his claims and serve for authority to sustain his position." *Wilson v Taylor,* 457 Mich 232, 243; 577 NW2d 100 (1998).

The assertion by the heirs that the probate court violated due process by restricting the scope of hearings and by the "sua sponte" issuance of dispositive rulings is disingenuous. The only sua sponte rulings by the probate court involved the award of sanctions, which is fully authorized by MCR 2.114(E) and (F). The issuance of sanctions is mandatory and not discretionary. MCR 2.114(E). Furthermore, a judge's authority is unrestricted with regard to "the proper conduct and administration of the court in which the judge presides." MCR 9.205(A). The restrictions imposed by the probate court were attributable to Cohen's repeated insistence upon arguing the merits of motions or his position, on behalf of the heirs, despite prior instructions or rulings by the court to limit areas of inquiry or testimony. It is undisputed that a "trial judge is empowered to control proceedings in the court and, if necessary, to punish for contemptuous behavior." *In re Peisner,* 78 Mich App 642, 643; 261 NW2d 30 (1977); MCL 1701. See also, *In re Hocking,* 451 Mich 1, 23; 546 NW2d 234 (1996).

The heirs' assertion that due process was violated cannot be substantiated, given the probate court's provision of multiple evidentiary hearings to Cohen in response to his objections. "'The fundamental requirement of due

process is the opportunity to be heard at a meaningful time and in a meaningful manner.'" *In re Estate of Adams,* 257 Mich App 230, 234; 667 NW2d 904 (2003) (citation omitted). The refusal of the probate court to unnecessarily prolong proceedings, or to permit duplicative or previously determined irrelevant testimony or evidence, is within the discretion of the court and not a violation of due process. The probate court "complied with all due-process requirements by giving petitioner full and ample opportunity to present its position to the court by hearings and by briefs." *Id.* Cohen had a full opportunity for hearing. The fact that he misused the hearings is not violative of due process.[4] Moreover, on the limited record available, we cannot conclude that the probate court's factual findings and conclusions of law were deficient. The trial court has the inherent power to award costs and attorney fees as a sanction. *Persichini v William Beaumont Hosp.,* 238 Mich App 626, 637-639; 607 NW2d 100 (1999). In this case, the probate court awarded costs and attorney fees to sanction Cohen for his repeated failure to abide by the probate court's rulings and his interjection in the proceedings of issue that the probate court had determined were resolved. The pleadings filed by the heirs fail to distinguish between administrative costs incurred in administering the estate and the costs and attorney fees awarded as sanctions. Moreover, the pleadings fail to challenge any specific costs or attorney fee imposed. Therefore, the

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[4] The appeal is governed by the issues raised in the statement of questions presented. MCR 7.212(C)(5); *Meagher v McNeely & Lincoln, Inc,* 212 Mich App 154, 156; 536 NW2d 851 (1995). There was no argument or issue in the statement of questions presented to distinguish between any award for services provided to Parletta as opposed to Norris, and therefore, we do not address it.

pleadings are insufficient to raise a challenge on appeal. *Wilson, supra.*

Secondly, Cohen and the heirs allege that the probate court erred in granting attorney fees to Morris and Michael Morris and the amount of fees awarded. Equitable principles govern probate court proceedings, and appeals are on the record and not de novo. MCR 5.802(B)(1); MCL 600.866(1); *In re Green Charitable Trust,* 172 Mich App 298, 331; 431 NW2d 492 (1988). Factual findings of the probate court are reviewed for clear error, *In re Webb H Coe Marital and Residuary Trusts,* 233 Mich App 525, 531; 593 NW2d 190 (1999), substantive determinations, including a decision to surcharge a fiduciary, are reviewed by this Court for an abuse of discretion. *In re Rice Estate,* 138 Mich App 261, 270; 360 NW2d 587 (1984). Additionally, this Court's review of the imposition of sanctions for "frivolous claims" is for clear error. *Kitchen v Kitchen,* 465 Mich 654, 662; 641 NW2d 245 (2002).

It is well-recognized that fiduciaries, MCL 700.3719(a); MCL 700.7503(2), and attorneys are entitled to reasonable compensation for necessary legal and administrative services performed on behalf of an estate or a personal representative. MCR 5.313(A); MCL 700.3722; MCL 700.3715(v); MCL 700.7401(2)(v). While a probate court may exercise broad discretion in determining the amount that comprises a reasonable compensation, *In re Krueger Estate,* 176 Mich App 241, 248; 438 NW2d 898 (1989), that discretion is not unfettered. Specifically, MCR 5.313 requires that, "In determining the reasonableness of fees, the court must consider the factors listed in MRPC 1.5(a)." When evaluating a fee petition, the probate court must review the requested attorney fees for reasonableness with a commensurate focus on preserving the assets of the

estate for the beneficiaries. *In re Sloan Estate,* 212 Mich App 357, 364; 538 NW2d 47 (1995). Specifically, legal services that are rendered on behalf of an estate are compensable if the services confer a benefit to the estate through either increasing or preserving the estate's assets. *Id.* at 362.

Cohen asserts that Morris was overcompensated by the probate court based on her dilatory performance as a fiduciary. This allegation was reviewed and rejected by the probate court on more than one occasion. Because Cohen has failed to demonstrate clear error regarding this portion of the probate court's rulings, there exists no viable issue with respect to Morris' entitlement to reimbursement for attorney fees and administrative fees incurred in accordance with MCL 700.3722, MCL 700.3715(v) and MCL 700.7401(2)(v).

The real issue comprises an assertion by Cohen that the probate court improperly awarded compensation to Morris and Michael Morris that was not properly recoverable because it constituted "fees for fees." *In re Sloan Estate, supra* at 360-364. This Court has defined "fees for fees" claims as claims that have been brought on behalf of the attorney seeking those fees. *In re Sloan Estate, supra* at 363. In *Sloan,* this Court determined that such fee claims neither increased nor preserved an estate's assets and that an estate may not be diminished to pay for such ordinary costs and fees incurred. *Id.* Specifically, this Court has determined that such costs:

> [A]re inherent in the normal course of doing business as an attorney, and the estate may not be diminished to pay those fees and costs. [*In re Sloan, supra* at 363.]

However, an exception applies:

> [W]here *extraordinary* fees and costs are incurred because of an opposing party's fraud, unjustified objections raised in bad faith, or other extraordinary circumstances, the probate court is authorized to impose appropriate sanctions via various fee-shifting mechanisms. [*Id.* at 363 n 2, citing MCR 5.114; MCR 2.114(B)-(F).]

Extraordinary circumstances existed to support the probate court's award of attorney fees as sanctions. MCR 2.114(E), (F); MCR 5.114(B)(2). Cohen's behavior unnecessarily prolonged the time necessary to resolve the estate and directly resulted in the incurrence of exorbitant attorney fees through his repeated objections, demands for evidentiary hearings, and ongoing failure to abide by probate court directives regarding the conduct and parameters of the proceedings. Cohen clearly was incapable of distinguishing between making and preserving a record for appellate review from merely beating a dead horse. In light of the extraordinary circumstances, the probate court did not err in awarding sanctions as measured by costs and attorney fees.

In reference to Cohen's assertions on appeal of due process violations by the probate court, this Court notes the plethora of hearings afforded to Cohen, which he either abused or failed to use to his clients' advantage. In addition, there is no basis to Cohen's assertion that the probate court's limitation of discovery resulted in due process violations, because a trial court may limit discovery to relevant issues. *Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 35; 654 NW2d 610 (2002). The probate court frequently afforded Cohen leeway in his questioning of witnesses, restricting only repetitive questioning or the

pursuit of evidence the probate court deemed irrelevant or duplicative based on its prior findings or rulings. Cohen failed to demonstrate wrongdoing by Morris. Without proof to substantiate his allegations of wrongdoing, there was no basis for Cohen's argument regarding a fee offset. For the probate court to have continued to permit repetitive and prolonged discovery, based solely on conjecture and vague allegations of wrongdoing, would have been tantamount to promoting and encouraging an impermissible fishing expedition. *VanVorous v Burmeister,* 262 Mich App 467, 477; 687 NW2d 132 (2004); see also, *In re Hammond, supra,* p. 386. As such, Cohen fails to demonstrate a viable claim that the probate court violated due process by defining the parameters of discovery. In addition, this Court determines Cohen's allegations to comprise merely an assertion of due process violations without any substantive discussion of the purported behaviors comprising the violations and without any discussion or citation to relevant or applicable law. "A party may not simply announce a position and leave it to this Court to discover the basis for his claims and serve for authority to sustain his position." *Wilson, supra.*

Lastly, the heirs and Cohen assert that it was error to deny their request for disqualification of the probate judge. Because the motion for disqualification was not filed in conformance with MCR 2.003(C)(1), and (2), where the filing was both untimely and failed to include the requisite supporting affidavit, the motion was procedurally defective and thus, the issue is not preserved for appellate review. *People v Bettistea,* 173 Mich App 106, 123; 434 NW2d 138 (1988). Typically, a trial court's findings of fact on a motion for disqualification are reviewed for an abuse of discretion, but the applicable facts applied to the law

are reviewed de novo. *Armstrong v Ypsilanti Twp,* 248 Mich App 573, 596; 640 NW2d 321 (2001).

Cohen asserts that numerous statements and rulings made during the proceedings by the probate judge impugned his abilities as an attorney, demonstrated general disrespect and intolerance for his arguments, and demonstrated bias. We conclude that the heavy presumption of judicial impartiality has not been overcome.

MCR 2.003(B) describes the grounds for judicial disqualification as involving a trial judge's inability to "impartially hear a case" because of the judge being "personally biased or prejudiced for or against a party or attorney." MCR 2.003(B)(1). It is generally recognized that there exists a "heavy presumption of judicial impartiality," and, in order to overcome this presumption, a litigant must come forward with evidence of actual bias or prejudice. *Cain v Dep't of Corrections,* 451 Mich 470, 496-497; 548 NW2d 210 (1996). The evidence of prejudice or bias must be personal and must also have its basis in events or circumstances outside the judicial proceedings. *Id.* at 495-496, 548 NW2d 210. Without this demonstration, an adverse ruling, standing alone, is insufficient for judicial disqualification. *Gates v Gates,* 256 Mich App 420, 440; 664 NW2d 231 (2003).

Cohen relies on statements made during the course of the proceedings and the trial court's adverse rulings. Cohen fails to recognize that the probate court also chastised opposing counsel's conduct, did not rule exclusively contrary to Cohen's position or his clients' interests, and routinely granted Cohen the opportunity for evidentiary hearings. The probate court limited the scope of certain proceedings in light of the terms of the settlement agreement

and the court's factual conclusions that Cohen was acting to delay the proceedings and increase fees in the process. The probate court also reversed itself to grant relief in favor of the heirs, concluding that they were entitled to evidentiary hearings to determine the reasonableness of the costs and attorney fees. Counsel fails to acknowledge his penchant for ignoring procedural requirements and the directives of the probate court. The lower court transcripts evidence the development of palpable animosity between counsel involved in the hearings, and the growing frustration of the probate court with Cohen's tactics, which were viewed as unreasonable and serving no other purpose than to delay the proceedings.

Although we do not condone the statements made by the probate judge, the statements clearly reflect the frustration caused by Cohen's repeated disregard of the court's rulings. Case law recognizes that the trial court may become frustrated by the strategy of counsel, but bias will not be established where the parties receive a fair trial:

> The trial judge also appeared to be agitated by the tactics of claimants' counsel. . . . As a result, the judge was apparently becoming frustrated and was losing his patience. Although the judge may not have displayed the utmost courtesy, being courteous is the ideal, not the requirement. What is required is that the parties receive a fair trial. Here, claimants have failed to show that the judge's views controlled his decision-making process. [*In re Forfeiture of $1,159,420,* 194 Mich App 134, 153-154; 486 NW2d 326 (1992).]

Accordingly, even if this issue was properly preserved for appellate review, the presumption of judicial impartiality was not overcome.

Affirmed.

/s/ Jessica R. Cooper
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF WAYNE

ESTATE OF
MARGARET LANGLAND

a deceased individual

_____/

Case No. 02-657710-DA
~~and 2002-653718-TV~~
Hon. David J. Szymanski

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/

ORDER TO DISMISS

At a session of said Court held in the Courtroom thereof in the City of Detroit, County of Wayne and State of Michigan on FEB 3 2004.

PRESENT: HONORABLE DAVID J. SZYMANSKI,
PROBATE JUDGE

On reading and filing the attached Motion to Dismiss and the Court having considered the same and being fully advised in the premises, it is hereby

ORDERED:

A. That this case be dismissed in its entirety as to Henry Ford Village, only, with prejudice;

B. That $793.67 in attorney fees incurred by Henry Ford Village from the July 7, 2003 appearance to the drafting of the request for stipulation to dismiss, December 4, 2003, is assessed jointly and severally to Steven G. Cohen and/or his clients, and Joseph G. Fabrizio and/or his client;

C. That $500.00 in attorney fees is assessed jointly and severally to Steven G. Cohen and/or his clients, and Joseph G. Fabrizio and/or his client for having to bring this motion and defend it;

D. That costs of $20.00 filing fee and $10.00 in service fees are assessed jointly and severally to

Steven G. Cohen and/or his clients, and Joseph G. Fabrizio and/or his client;

E. That such assessments are to be paid within seven days of this Order or such assessments shall be adjusted to reflect that entire attorney fees for which Henry Ford Village was liable for their participation in this action..

DAVID J. SZYMANSKI
PROBATE JUDGE

Order prepared by:
Arthur R. Butler

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ESTATE OF MARGARET LANGLAND a deceased person	Case No. 2002-653718-TV Hon. David J. Szymanski

/

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/

ORDER DENYING PETITIONER'S MOTION FOR DISQUALIFICATION AND REFERRING MOTION TO CHIEF JUDGE MILTON MACK AND ORDERING A STAY OF ALL PROCEEDINGS

At a session of Court
held in Wayne County Probate Court
City of Detroit, County of Wayne, State of Michigan
on MAR X3 2004

Present: HON: DAVID J. SZYMANSKI
Probate Court Judge

Petitioners renewed their motion for disqualification of this Court from the above captioned case.

IT IS ORDERED that the motion to disqualify Judge David Szymanski is denied [for the reason that the motion is not timely filed pursuant to MCR 2.003(c). /s/ DJS]

IT IS FURTHER ORDERED that the motion to disqualify Judge David Szymanski is hereby referred to Chief Judge Milton Mack, and all proceedings in this matter are stayed until further order of the Court.

Dated: 3/3/04 /s/ DAVID J. SZYMANSKI
PROBATE COURT JUDGE

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ESTATE OF
MARGARET LANGLAND
a deceased person

Case No. 2002-653718-TV

Hon. David J. Szymanski

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/

ORDER

At a session of Court
held in Wayne County Probate Court
City of Detroit, County of Wayne, State of Michigan
on MAR 17 2004

Present: HON: MILTON L. MACK, JR.
Probate Court Judge

IT IS ORDERED that Petitioners' motion to disqualify Judge David J. Szymanski is denied.

Date: MAR 17 2004 /s/ MILTON L. MACK, JR.
Honorable Milton L. Mack, Jr.

STATE OF MICHIGAN
IN THE PROBATE COURT OF WAYNE COUNTY

ESTATE OF MARGARET LANGLAND, a deceased individual.	Case No: 2002-657710-DA and 2002-653718-TV Hon. David J. Szymanski

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ORDER

At a session of said Court, held at the Coleman A. Young Municipal Center, City of Detroit, County of Wayne, State of Michigan on APR 14 2004
PRESENT: DAVID J. SZYMANSKI
HONORABLE DAVID J. SZYMANSKI

Robert L. Litt, Esq. and Marcia Ross, Esq. having appeared for their depositions on February 3, 2004 before the Honorable David J. Szymanski; depositions were commenced and terminated by the Court and an award of sanctions pursuant to MCR 2.302(g) and MCR 2.114 were awarded against attorney Steven G. Cohen in the amount necessary for Attorneys Litt and Ross to prepare for and attend the hearing and such other amounts as the Court determined; Attorneys Litt and Ross were to file a Petition with the Court for allowance of such fees; the Petition having been filed and having come on for hearing before the Court; and the Court being fully advised in the premises:

IT IS ORDERED that fees and costs in the amount of [$2,379.89 /s/ DJS] ~~Three Thousand One Hundred Twenty Two Dollars and 39/100 ($3,122.39)~~ are awarded to Goldstein Litt Slinger, PLLC against attorney Steven G. Cohen in the form of sanctions, ~~and an additional amount of $_____ is awarded to Goldstein Lit~~ [sic] ~~Slinger, PLLC against attorney Steven G. Cohen in the form of additional sanctions.~~ [payable forthwith. /s/ DJS]

[4/14/4 /s/ DJS]

/s/ David J. Szymanski
DAVID J. SZYMANSKI
Probate Court Judge

DRAFTED BY:
Goldstein Litt Slinger, PLLC
Attorneys for Mario Parletta and
Thomas P. Norris, only

STATE OF MICHIGAN
IN THE PROBATE COURT OF WAYNE COUNTY

ESTATE OF MARGARET LANGLAND, a deceased individual.	Case No: ~~2002-657710-DA~~ and 2002-653718-TV Hon. David J. Szymanski

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ORDER

At a session of said Court, held at the Coleman A. Young Municipal Center, City of Detroit, County of Wayne, State of Michigan on APR 26 2004

PRESENT: DAVID J. SZYMANSKI

HONORABLE DAVID J. SZYMANSKI

The parties having appeared for an Evidentiary Hearing on April 26, 2004 on the issue of Respondents' Petition for attorney fees and cost in the amount of $30,064.41; Petitioners having subpoenaed Robert L. Litt, Marcia C. Ross, Mario Parletta and Thomas P. Norris; Respondents having replied to said subpoenas in writing; the matter having come on for hearing; Petitioners having made objections; Petitioners having moved for directed verdict at the close of the hearing; and the Court be otherwise fully advised in the premises:

IT IS ORDERED that Mario Parletta and Thomas P. Norris were not required to appear at the hearing despite the Subpoena issued;

IT IS FURTHER ORDERED that attorney fees in the amount of Twenty-Eight Thousand Four Hundred Forty Dollars and 00/100 ($28,440.00) be paid forthwith from the funds held by Carol Morris, Esq. to Goldstein, Litt Slinger, P.L.L.C. in this matter representing payment for 189.60 hours at the rate of $150.00 per hour;

IT IS FURTHER ORDERED that no costs or additional fees shall be paid to Goldstein, Litt, Slinger, P.L.L.C. in this matter;

IT IS FURTHER ORDERED that Respondents may notice for hearing the September 10, 2003 PETITION FOR

COSTS ADVANCED BY RESPONDENT MARIO PARLETTA on behalf of Margaret Langland.

[4/27/4 /s/ DJS]

/s/ David J. Szymanski
DAVID J. SZYMANSKI
Probate Court Judge

DRAFTED BY:
Goldstein Litt Slinger, PLLC
Attorneys for Mario Parletta and
Thomas P. Norris, only

Approved by the Michigan State Court Administrator

State of Michigan Probate Court County	Order Awarding Fees, Costs and Sanctions	FILE NO. 2002-653718-TV

Estate of MARGARET LANGLAND

Upon hearings before the Court; with the Court advised in the premises;

IT IS HEREBY ORDERED, for reason stated on the record that the petition and amended petition of Carol Morris, former personal representative and former successor trustee, be granted as to fees, costs and sanctions as follows:

(a) $18,642.50 in fees and costs to Carol Morris, to be paid from funds held in escrow by Carol Morris.

(b) $11,297.81 to be paid to Morris & Morris, P.C., from the funds held in escrow; such amount awarded as sanctions against Stephen G. Cohen.

Such payments shall be made on the 22nd day from entry of this order. This order is without prejudice to Petitioners' right to seek fees and costs for time or services subsequent to the petitions.

Do not write below this line – For court use only

5/25/4

/s/ David J. Szymanski
PROBATE COURT JUDGE
DAVID J. SZYMANSKI

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ESTATE OF MARGARET LANGLAND, A deceased person.	Case No. 2002-653718-TV Hon. David J. Szymanski

/

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Attorney for Marion Brown, John Martin, Theresa Hughes and Elizabeth Mazell
30300 Northwestern Highway
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E. Michael Morris (P31547)
Morris & Doherty, P.C.
Co-Counsel for Personal Rep. and Trustee
300 Park Street, Suite 485
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Robert L. Litt (P16729)
Diane Slinger (P35693)
Marcia C. Ross (P37744)
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Suite 245
Farmington Hills, MI 48334
(248) 539-1960

Carol A. Morris (P43700)
Attorney for Personal Representative and Trustee
Wayne County Public Administrator
27840 Plymouth Road
Livonia, MI 48150
(734) 425-9055

/

SECOND ORDER AWARDING FEES, COSTS AND SANCTIONS

Upon hearing before the Court; with the Court advised in the premises;

IT IS HEREBY ORDERED, for reasons stated on the record, that the Petition For Attorneys' Fees and Sanctions and to Determine Priority of Administrative Charges, filed on behalf of Carol Morris, former personal representative and former successor trustee, be granted as follows:

a. 7,068.00 in fees and costs are awarded to Carol Morris;

b. 11,745.50 in fees and costs are awarded to Morris & Morris, P.C.

c. The above amounts are awarded jointly and severally against the estate and against attorney Steven G. Cohen [and his law firm /s/ DJS]; and

d. Due to attorney Cohen's repeated violations of MCR 2.114, the fees and expenses of attorneys Carol A. Morris, E. Michael Morris, Robert Litt and Marcia Ross shall have priority as to any claim by attorney Cohen for fees so that, attorney Cohen shall not be entitled to receive any fees from the estate unless and until all attorneys' fees and costs that have been ordered by this court have been paid to attorneys Carol A. Morris, E. Michael Morris, Robert Litt and Marcia Ross.

[9/28/4 /s/ DJS]

/s/ David J. Szymanski
PROBATE COURT JUDGE
DAVID J. SZYMANSKI

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ESTATE OF MARGARET LANGLAND, A deceased person.	Case No. 2002-653718-TV Hon. David J. Szymanski

/

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/

JUDGMENT

At a session of said Court, held at the Wayne County Probate Court, Detroit, Michigan on FEB 14 2007
PRESENT: HON. DAVID J. SZYMANSKI
PROBATE COURT JUDGE

A Petition having been filed on behalf of former personal representative and trustee Carol A. Morris for attorneys' fees incurred in successfully defending her conduct in her court-appointed roles; the prior rulings of this Court having been affirmed by the Michigan Court of Appeals, with leave to appeal denied by the Michigan Supreme Court; such prior rulings having included a finding that administrative costs included attorneys' fees reasonably incurred by Ms. Morris; the Court finding that Ms. Morris subsequently incurred additional attorneys' fees and costs in a successful defense on appeal; the Court further finding that such attorneys' fees are administrative costs in this matter, pursuant to (a) the prior rulings of this Court, which represent law of the case, (b) a stipulated order previously entered by this Court, and (c) statutory and court rule authority;

IT IS HEREBY ORDERED, a Judgment be, and hereby is entered against the estate in the amount of $27,259.05 for attorneys' fees and costs incurred by Ms. Morris in connection with defending her actions while performing services on behalf of the estate.

IT IS FURTHER ORDERED that the estate shall, within ~~10~~ [21 /s/ DJS] days of this Judgment, pay from the funds being held by attorney Steven Cohen, the sum of $11,637.80, plus any interest accrued thereon, in partial satisfaction of this Judgment, to Morris & Doherty, P.C..

THIS IS A FINAL ORDER WHICH DISPOSES OF ALL CLAIMS

[2/14/7 /s/ DJS]

/s/ David J. Szymanski
~~CIRCUIT~~ COURT JUDGE
[PROBATE /s/ DJS]

Order

Michigan Supreme Court
Lansing, Michigan

Clifford W. Taylor,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman,
Justices

November 29, 2006

131808-10

In re Estate of MARGARET LANGLAND, Deceased.

MARION BROWN, JOHN MARTIN, THERESA HUGHES, and ELIZABETH MAZELL,

Petitioners-Appellants,

v

MICHAEL MARTIN, MARIO PARLETTA, THOMAS P. NORRIS, and CAROL A. MORRIS, Successor Personal Representative and Successor Trustee of the Estate of MARGARET LANGLAND, Deceased,

Respondents-Appellees.

SC: 131808
COA: 255287
Wayne PC: 02-653718-TV

In re Estate of MARGARET LANGLAND, Deceased.

CAROL A. MORRIS, Successor Personal Representative and Successor Trustee of the Estate of MARGARET LANGLAND, Deceased,

Petitioner-Appellee,

v

STEVEN G. COHEN, MARION BROWN, JOHN MARTIN, THERESA HUGHES, and ELIZABETH MAZELL,

Respondents-Appellants.

SC: 131809
COA: 256134
Wayne PC: 02-653718-TV

In re Estate of MARGARET LANGLAND, Deceased.

CAROL A. MORRIS, Successor Personal Representative and Successor Trustee of the Estate of MARGARET LANGLAND, Deceased, E. MICHAEL MORRIS, ROBERT LITT, MARCIA ROSS, and MORRIS & MORRIS, P.C.,

Petitioners-Appellees,

v

MARION BROWN, JOHN MARTIN, ELIZABETH MAZELL, and STEVEN G. COHEN, d/b/a COHEN & ASSOCIATES, P.C.,

Respondents-Appellants.

SC: 131810
COA: 258476
Wayne PC: 02-653718-TV

/

On order of the Court, the application for leave to appeal the June 27, 2006 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

[SEAL] I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 29, 2006 /s/ Corbin A. Davis
Clerk

HENRY FORD VILLAGE
15101 FORD ROAD
DEARBORN, MICHIGAN 48126
(313) 584-5200
www.HenryFordVillage.com

APARTMENT RELEASE – TRANSFER

I hereby release apartment/room #CC115 for resale. The apartment/room will be vacated no later than 7/13/02 at which time I will also relinquish my keys.

Will this be a transfer to another apartment?
Yes ___ No ✓
If yes, transferring to apartment/room #_____ Date: _____

Reserved Parking/Carport Yes ___ No ✓
Storage Room #5, bin(s) 8 release 7/9/02 (if applicable)

In accordance with the Residence and Care Agreement (sec. 603i Vacancy Fee), I understand that I am responsible for paying the costs associated with refurbishing the apartment/unit to bring it back to a like-new condition.

In order to expedite the resale of apartment CC115, you have my permission to begin showing this apartment on 7/10/02.

Estimated refurbishing costs are painting: $705.00, carpeting, $935.00, and cleaning, $95.00. Actual costs may vary if upon inspection there is additional damage, modifications or missing items.

Resident's name: Margaret Langland

Reason for release: Deceased 6/27/02

Move-in date: 12/5/95

Person acting on resident's behalf: Mario A. Parletta
Relationship: Trustee/brother

Address: 19615 Woodmont, Harper Woods, MI 48225

Phone Number: (313) 884-6019 (home)

Signature: /s/ Mario A. Parletta Date: 7/10/02

Henry Ford Village
Representative: Jennifer McClendon Date: 7/10/02

If you would like the final bill deducted from your deposit, please sign below.-

Signature: /s/ Mario A. Parletta Date: 7/10/02

In The Matter Of:

Estate of Margaret Langland
a deceased person

Robert L. Litt
February 3, 2004

Luzod Reporting Service, Inc.
The Ford Building
615 Griswold – Suite 815
Detroit, MI 48226
(313) 962-1176 FAX: (313) 962-7073

* * *

[34] Mr. Cohen: I'm trying to understand from the Court what I can and cannot ask. As the Court is aware, discovery is usually very broad.

The Court: . . . [35] You like to continue to dig the hole deeper and deeper, and if you do, I'll throw in the dirt and I'll bury you in it. Do I make myself clear?

* * *

THE PROBATE COURT
FOR
COUNTY OF WAYNE [SEAL] STATE OF MICHIGAN

[Names And Addresses Omitted In Printing]

July 23, 2004

Mr. Steven Cohen Esq.
30300 Northwestern Hwy.
Suite 105
Farmington Hills, MI 48334

Re: Estate of Margaret Langland

Dear Mr. Cohen:

In Court you asked what documents you signed that have proven sanctionable by the Court. I indicated in Court that I would not take the time to look through the file to find them, but have now had an opportunity to review the file to compile a list of documents that I find were filed in violation of the Court Rules as indicated on the record. While the documents on their face do not necessarily indicate the improper purpose of the document, the manner in which you have presented the documents in Court clearly indicates the documents were not presented for appropriate purposes and therefore violate the Court Rules.

The documents found to be so signed include, but are not necessarily limited to: Petitioners Objection to Mario Parletta's Petitions for Payment of Attorney Fees and Costs filed September 17, 2003; Petitioners' Objection to Henry Ford Village's Motion to Dismiss, filed January 22, 2004; Petitioners' Objection to Proposed Orders Pursuant to and Following February 3, 2004 Hearing and Motion for Stay of Proceedings and Other Relief, filed March 31,

2004; Petitioners' Objection to Motion for Protective Order, filed February 24, 2004; Petitioners' Objection to Amended Petition Dated February 17, 2004 for Fees and Supplemental Petition to Assess Sanctions dated February 17, 2004, filed April 8, 2004; Petitioners' Objection to Carol Morris' Petition for Fees, filed September 17, 2003, and Petitioners' Objection to Objection to Bond on Appeal and Request for Sanctions, filed June 3, 2004.

As indicated this is not an exhaustive list. It has been prepared through a brief review of the file. The specific sanctions imposed do not apply to all of these documents nor are they limited to the filing of these pleadings. The Court does find in relation to these and other pleadings that the attorney filed the documents with his signature in violation of the Court Rules for purposes of increasing the cost of litigation, harassing the other parties in the case, and delaying the proceedings. This violates MCR 2.114.

Sincerely,

/s/ David J. Szymanski
David J. Szymanski
Judge of Probate

/km

cc: Marcia Ross
Joseph Fabrizio
Carol Morris
E. Michael Morris

EXCERPT OF PROCEEDINGS
January 7, 2004

STATE OF MICHIGAN
IN THE PROBATE COURT
FOR THE COUNTY OF WAYNE

ESTATE OF MARGARET LANGLAND,

a deceased individual,

Case No. 2002-657710-DA

and 2002-653718-TV

HON. DAVID J. SZYMANSKI,

_____/

PAGES 1 TO 28

EXCERPT of PROCEEDINGS in the

above-entitled matter,

before HONORABLE DAVID J. SZYMANSKI,

Room 1303 Coleman A. Young Municipal Complex,

Detroit, Michigan,

Excerpt beginning at approximately 12:11 p.m.

Wednesday, January 7, 2004

* * *

[24] Mr. Cohen: That is true. How can [25] I contest their fee – for instance, if their – if one of their line items says that I had a two hour meeting with my client, okay. If I can't ask them what the subject matter of that meeting was, I can't determine whether it had anything to do with this case.

Again, it could have been about a trip to the Bahamas.

The Court: I will make those determinations at the time of the discovery, but what documents are you looking for?

I mean, if they wrote a letter to their client, you don't expect them to produce that?

Mr. Cohen: Absolutely, your Honor. There is no attorney-client privilege when –

The Court: Communication between them and their client and that's not attorney-client?

Did you go to law school?

Mr. Cohen: Your Honor, if I may be allowed to explain, a letter – communications between attorney clients are privileged except when they are waived. They are waived whenever –

The Court: Who waived it?

Mr. Cohen: It's waived in their petition. They brought a petition for work done for [26] their client. If I can't find out what work it is that they did for their client, I can't defend against their petition.

All attorney-client privileged is waived in an attorney fee petition.

The Court: You better go back to law school. You're missing it. If it's a dispute between them and their client, yes, it's waived.

* * *